

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 In-Home Supportive Services Health Care Certification Requirement

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held November 4, 2015, as follows:

Office Building # 8
744 P St., Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on November 4, 2015.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT: Office of Regulations Development
 California Department of Social Services
 744 P Street, MS 8-4-192
 Sacramento, California 95814
 TELEPHONE: (916) 657-2586 FACSIMILE: (916) 654-3286
 E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures (MPP) Chapter 30-700

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The health care certification is an In-Home Supportive Services (IHSS) program eligibility requirement, the purpose of which is to assist in determining an applicant's need for IHSS in order to remain safely in his/her own home.

Senate Bill (SB) 72 (Chapter 8, Statutes of 2011), which adopted Welfare and Institutions Code (WIC) section 12309.1, required the California Department of Social Services (CDSS), in consultation with California Department of Health Care Services and stakeholders, develop a standard health care certification form. The consultation resulted in the IHSS Program Health Care Certification form (SOC 873), which an IHSS program applicant must obtain from a licensed health care professional to certify that the individual is unable to independently perform one or more activities of daily living (ADLs) and that, without services to assist with ADLs, the individual is at risk of placement in out-of-home care. The CDSS implemented the health care certification requirements for IHSS applicants effective August 1, 2011, by way of All County Letter (ACL) No. 11-55 dated July 27, 2011. A follow-up ACL addressing circumstances under which services may be authorized prior to county receipt of SOC 873 was released in November 2011.

These proposed regulations adopt language in the Manual of Policies and Procedures (MPP), Division 30, sections 30-701 (Definitions) and 30-754 et seq. (Health Care Certification). The proposed regulations specify that, as a condition of receiving IHSS, an applicant must obtain a certification from a licensed health care professional declaring that the individual is unable to perform some ADLs independently and that without services to assist him/her with ADLs the individual is at risk of placement in out-of-home care. The proposed regulations define a licensed health care professional for the purpose of completing and signing the SOC 873, and specify policies, procedures and time frames relating to the health care certification requirement, including the use of SOC 873 and the IHSS Program Notice to Applicant of Health Care Certification Requirement (SOC 874). Finally, the proposed regulations also specify exception criteria when services can be authorized prior to county receipt of SOC 873.

Forms to be Adopted

This proposed rulemaking action adopts and incorporates by reference the following forms:

IHSS Program Health Care Certification [SOC 873 (Rev. As Noticed, Effective date of proposed regulations)]; and

IHSS Program Notice to Applicant of Health Care Certification Requirement [SOC 874 (Rev. As Noticed, Effective date of proposed regulations)].

Anticipated Benefits of the Proposed Regulation

The proposed regulations will improve program integrity within the IHSS program because they clarify and make specific that, as a condition of receiving IHSS, an individual must obtain a certification from a licensed health care professional declaring that the individual is unable to perform some ADLs independently and that without services to assist him/her with ADLs, the individual is at risk of placement in out-of-home care. This will help to ensure that IHSS program services are limited to those individuals who have a genuine need for services. Because these regulations apply only to individuals applying for IHSS, they do not impose any additional costs or fees on individuals, nor will they result in higher product prices or in diminished product choices or quality of good and services produced in the private sector. There is no specific benefit to the health or welfare of the state's workers or its environment.

Determination of Inconsistency/Incompatible with Existing State Regulations

The CDSS has made an initial determination that these proposed regulations are not inconsistent or incompatible with existing regulations. These are the only regulations that concern IHSS health care certification for IHSS applicants.

COST ESTIMATE

1. Costs or Savings to State Agencies: The funding was budgeted in fiscal year (FY) 2013-14 Appropriation under the "Elim. Svcs. For Recipients w/o Health Care Cert." premise.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: The funding was budgeted in fiscal year FY 2013-14 Appropriation under the "Elim. Svcs. For Recipients w/o Health Care Cert." premise.
3. Nondiscretionary Costs or Savings to Local Agencies: The funding was budgeted in FY 2013-14 Appropriation under the "Elim. Svcs. For Recipients w/o Health Care Cert." premise.
4. Federal Funding to State Agencies: The funding was budgeted in FY 2013-14 Appropriation under the "Elim. Svcs. For Recipients w/o Health Care Cert." premise.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are state-mandated local costs, which require state reimbursement under Section 17500 et seq. of the Government Code, that is provided for in the Budget Act to cover any costs local agencies may incur from these proposed regulations.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that these regulations only apply to individuals applying for IHSS services.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has made an initial determination that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to IHSS applicants, state and county agencies. Further, the regulations contained in this package concern IHSS applicants who are not included in the definition of small businesses pursuant to Section 11342 of the Government Code. As such, they do not impact small businesses either in terms of occupations, reporting requirements, competitiveness, fees, charges or assessments. These regulations carry no compliance requirements for small businesses. Hence, small businesses will incur no information or transaction costs associated with compliance with these regulations.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The analysis is intended to be a tool or baseline to establish that these regulatory measures are the most cost-effective to affected California enterprises and equally effective in implementing the statutory policy or other provision of law. The CDSS has made the initial determination detailed in the Initial Statement of Reasons that: the adoption of the proposed amendments will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows:

The proposed regulations will improve program integrity within the IHSS program requiring that, as a condition of receiving services, an individual obtain a certification from a licensed health care professional declaring that the individual is unable to perform some activities of daily living independently and without services to assist him/her with activities of daily living, the individual is at risk of placement in out-of-home care. This will help to ensure that IHSS program services are limited to those individuals who have a genuine need for services. Because these regulations apply only to individuals applying for IHSS, they do not impose any additional costs or fees on individuals, nor will they result in higher product prices or in diminished product choices or quality of good and services produced in the private sector. There is no specific benefit to the health or welfare of the state's workers or its environment.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In developing the regulatory action, CDSS has not considered any other alternatives because no alternatives have been proposed.

AUTHORITY AND REFERENCE CITATIONS

Authority Cited: Sections 10553, 10554, 12301.1 and 22009(b), Welfare and Institutions Code; and Chapter 939, Statutes of 1992 (AB 1773).

Reference: Section 12309.1, Welfare and Institutions Code.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Kenneth Jennings (916) 657-2586

Backup: Ying Sun (916) 657-2586